

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of

RADICS & CO., LLC
(Formerly STEPHEN P. RADICS
AND COMPANY), Certified Public
Accountants, Former
External Auditor of MARINE
VIEW SAVINGS BANK, SLA,
Middletown, New Jersey

OTS Order No. NE96-1

Date: January 10, 1996

**STIPULATION AND CONSENT TO ISSUANCE OF CONSENT CEASE
AND DESIST ORDER REQUIRING AFFIRMATIVE RELIEF**

This Stipulation and Consent to issuance of Consent Cease-And-Desist Order Requiring Affirmative Relief ("Stipulation and Consent"), concerning the accompanying Consent Cease and Desist Order Requiring Affirmative Relief ("the Order"), is made by RADICS & CO., LLC (formerly STEPHEN P. RADICS & COMPANY), Certified Public Accountants, Pine Brook, New Jersey ("RADICS & CO."), and is accepted by the OFFICE OF THRIFT SUPERVISION ("OTS"), an office within the United States Department of the Treasury, acting by and through its Regional Director for the Northeast Region.

R E C I T A L S

WHEREAS, the OTS examined, supervised and regulated MARINE VIEW SAVINGS BANK, SLA ("MARINE VIEW"), a federally chartered savings and loan association that had its home office in Middletown, New Jersey, prior to MARINE VIEW being placed in receivership on November 11, 1991;

WHEREAS, RADICS & CO. served until November 1991 as external auditor at MARINE VIEW;

WHEREAS, based on OTS formal examination No. East-92-2, the OTS has found, inter alia, that:

1. During the relevant times discussed in this document, RADICS & CO. served as MARINE VIEW'S external auditor. At all pertinent times herein, RADICS & CO. was an "institution-affiliated party" of MARINE VIEW, within the meaning of 12 U.S.C. §1813(u). Barry Morgan was the partner in RADICS & CO. who was responsible for oversight of RADICS & CO.'S audit services for financial institutions and for the supervision of all audits for MARINE VIEW.

2. RADICS & CO. prepared and issued an audit opinion on MARINE VIEW'S financial statements for the period ending December 31, 1990, entitled "Marine View Savings Bank, S.L.A. and Subsidiaries, Consolidated Financial Statements (with Independent Auditors' Report Thereon)" ("Consolidated Financial Statements").

3. Note 15 (Regulatory Capital (unaudited)) of the Notes To Consolidated Financial Statements stated in part as follows: "At

December 31, 1990, the Savings Bank's risk-based capital was \$5.4 million or 7.2% of risk-weighted assets." At that time, OTS required a savings institution to maintain a minimum core and supplemental capital equal to at least 7.2% of its risk-weighted assets. According to the Consolidated Financial Statements submitted to the Board of Directors of MARINE VIEW and the OTS, MARINE VIEW met the minimum regulatory requirement for risk-based capital in effect at that time.

4. Workpapers of RADICS & CO. that were prepared to support the audit opinion issued by RADICS & CO., dated March 6, 1991, indicate that MARINE VIEW was not in compliance with the minimum risk-based capital requirement in the OTS regulations. Included among such workpapers is a revised computation, prepared by employees of RADICS & CO., of MARINE VIEW'S actual minimum regulatory capital amounts and ratios and compliance status as of December 31, 1990. These computations, which were revisions prepared by RADICS & CO., and reviewed by Barry Morgan, of MARINE VIEW'S own computations of regulatory capital on the Schedule CCR submitted to the OTS, indicate that MARINE VIEW did not meet the minimum risk-based capital requirement as of December 31, 1990. The revised risk-based capital ratio of 7.13% reflected in the aforementioned workpapers of RADICS & CO. is less than the minimum required by the pertinent regulatory requirement of 7.2% in effect at that time.

5. Notwithstanding RADICS & CO.'S awareness of MARINE VIEW'S deficiency with respect to the minimum risk-based capital requirement, the Consolidated Financial Statements that had been

the subject of an audit opinion by RADICS & CO. stated that MARINE VIEW had satisfied all regulatory capital requirements, even though MARINE VIEW had failed to meet the minimum risk-based capital requirement. As a result, the management and Board of Directors of MARINE VIEW, and the OTS, were not timely advised of MARINE VIEW'S failure to meet the minimum regulatory risk-based capital requirement as of December 31, 1990. Consequently, neither the management and Board of Directors of Marine View nor the OTS was able to consider or assess the regulatory consequences of MARINE VIEW'S deficiency in risk-based capital as of December 31, 1990.

6. Notwithstanding RADICS & CO.'S knowledge of MARINE VIEW'S deficiency with regard to the minimum risk-based capital requirement, RADICS & CO. (i) failed to alert in any manner the management and Board of Directors of MARINE VIEW of the failure to meet this minimum regulatory capital requirement and (ii) failed to take any other action with respect to MARINE VIEW concerning information relating thereto.

7. Notwithstanding RADICS & CO.'S knowledge of MARINE VIEW'S deficiency with regard to the minimum risk-based capital requirement, RADICS & CO. did not make every appropriate effort subsequent to the issuance of the audit opinion on the Consolidated Financial Statements to revise or change the incorrect information contained therein regarding the risk-based capital figure and ratio for MARINE VIEW.

8. RADICS & CO. violated Generally Accepted Auditing Standards (GAAS) concerning the communication of errors or

irregularities and the reporting on information accompanying basic financial statements. Additionally, RADICS & CO. failed to satisfy the provisions in the AICPA Audit and Accounting Guide, "Savings and Loan Associations" (1987 ed.) at 16-17, which relate to compliance with supervisory regulations ("1987 Audit Guide"). Under these standards, as applied to savings and loan associations in the 1987 Audit Guide, RADICS & CO. had a responsibility to ensure that the appropriate level of management and the Board of Directors at MARINE VIEW were adequately informed about MARINE VIEW'S failure to meet the minimum regulatory risk-based capital requirement. Although RADICS & CO. viewed the deficiency as immaterial from a purely quantitative standpoint, RADICS & CO. failed to recognize, from a qualitative standpoint, that the failure to meet regulatory capital requirements is a significant regulatory concern in evaluating the financial condition of a savings association.

9. MARINE VIEW was placed by the OTS in receivership on November 11, 1991, and the Resolution Trust Corporation ("RTC") was appointed receiver on that date.

WHEREAS, based upon the foregoing, the OTS is of the opinion that RADICS & CO. violated Generally Accepted Auditing Standards and thereby engaged in unsafe and unsound practices and breached the fiduciary duties owed by RADICS & CO. to MARINE VIEW; and

WHEREAS, the OTS, based upon the foregoing information, is of the opinion that the grounds exist for the agency to initiate administrative proceedings against RADICS & CO. for the issuance of an administrative order, pursuant to Section 8(b) of the

Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. §1818(b), and other applicable federal law; and

WHEREAS, RADICS & CO. desires to cooperate with the OTS and to avoid the time and expense of such administrative litigation with the OTS,

NOW, THEREFORE, RADICS & CO., for the purposes of this settlement only and without either admitting or denying either that the aforesaid grounds exist or the validity of the OTS's factual findings, conclusions and opinions set forth above (except as to the jurisdiction of the OTS, which is admitted), hereby stipulates and agrees as follows:

1. Consideration. RADICS & CO., in view of the foregoing premises and for the purposes of this settlement only, hereby voluntarily enters into this Stipulation and Consent and consents to issuance of the Order in consideration for OTS forever releasing and discharging RADICS & CO. from all potential claims and charges that have been or might have been asserted by the OTS against RADICS & CO. based on any and all alleged violations of law or regulation, unsafe or unsound practices, and breaches of fiduciary duty by RADICS & CO. while an external auditor of Marine View (including any subsidiary service corporations thereof).

2. Jurisdiction.

(a) MARINE VIEW, which was placed in receivership on November 11, 1991, had been a "Federal savings association," as that term is defined at 12 U.S.C.A. §§ 1462(5) and 1813(b)(2), and an "insured depository institution," as that term is defined at 12 U.S.C. §1813(c)(2), at all pertinent times.

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(b) RADICS & CO. acknowledges that, at all pertinent times, it has been: (i) the external auditor of MARINE VIEW, and (ii) an "institution-affiliated party" of MARINE VIEW, within the meaning of 12 U.S.C.A. § 1813(u).

(c) Pursuant to Section 3(q) of the FDIA, 12 U.S.C. §1813(q), the OTS is the "appropriate Federal banking agency" to maintain an enforcement proceeding against such a savings association and/or its institution-affiliated parties, and therefore, RADICS & CO. is subject to the authority of the OTS to initiate and maintain a cease and desist proceeding against RADICS & CO. pursuant to Section 8(b) of the FDIA, 12 U.S.C. §1818(b).

3. Consent. RADICS & CO. consents to the jurisdiction of the OTS and to issuance of the accompanying Order. RADICS & CO. agrees to comply with the terms of the Order and stipulates that the Order, including the OTS's issuance thereof, complies with all requirements of law.

4. Finality. The Order is issued by the OTS under the authority of 12 U.S.C.A. §§ 1818(b). RADICS & CO. acknowledges and understands that, upon issuance, the Order will be a final order that is effective and fully enforceable by the OTS under provisions of federal law, including Section 8(i) of the FDIA, 12 U.S.C. §1818(i)..

5. Waivers. RADICS & CO., following consultation with counsel, hereby waives the following legal rights only as to the issues in dispute in this matter:

(1) the right to be served with a written notice of charges, or other similar notice pursuant to provisions of Sections 8(b) of the FDIA (12 U.S.C.A. §§ 1818(b)), and other

applicable law;

(2) the right to an administrative adjudicatory hearing of the OTS's charges against RADICS & CO.;

(3) the right to seek judicial review of the Order, including (but not limited to) any such right provided by Section 8(h) of the FDIA (12 U.S.C.A. § 1818(h)) or otherwise to challenge the validity of the Order; and

(4) any claims for attorneys' fees or expenses under the Equal Access to Justice Act, 5 U.S.C.A. § 504.

6. Other Government Actions Not Affected; No Discharge.

(a) The OTS's issuance of the Order and RADICS & CO.'S consent to such issuance are solely for the purposes of settling and resolving the OTS's administrative claims against RADICS & CO., as provided by Paragraph 1 on Page 6 hereof. Such actions do not release, discharge, compromise, settle, dismiss, resolve, or in any way affect or preclude any actions, claims, civil or criminal charges against, or liability of RADICS & CO. that may arise in connection with its former relationship with Marine View (including its subsidiaries), and that may be or have been brought by the Resolution Trust Corporation ("RTC"), the Department of Justice, or any other government agency or entity other than the OTS.

7. Cooperation. RADICS & CO. shall cooperate fully with the OTS (including its enforcement and litigation lawyers) whenever requested in connection with any administrative proceeding or other litigation concerning MARINE VIEW or any institution-affiliated parties thereof.

8. Communications.

(a) The OTS may send written notices and other

communications to RADICS & CO. in care of its counsel:

George Gerard Campion, Esq.
Tompkins, McGuire & Wachenfeld
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102-4070

or to any other counsel retained by RADICS & CO., subsequent to the execution of the Stipulation and Consent and the Order, upon submission to the OTS of the notice of substitution of such counsel.

(b) All communications required or permitted to be sent by RADICS & CO. to the OTS shall be sent to:

Angelo Vigna, Regional Director
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

with a copy sent to the OTS's Enforcement Counsel, as follows:

Jules P. Kirsch, Esq.
Regional Counsel for Enforcement
Office of Thrift Supervision
10 Exchange Place, 18th Floor
Jersey City, New Jersey 07302

9. Miscellaneous.

(a) The construction and validity of this Stipulation and Consent and the Order shall be governed by the laws of the United States of America.

(b) All references to the OTS in this Stipulation and Consent and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

(c) All references to RADICS & CO. shall also mean

any of its successors and assigns.

(d) The section and paragraph headings in this Stipulation and Consent and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation and Consent or the Order.

(e) The terms of this Stipulation and Consent and other Order represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(f) The terms of this Stipulation and Consent and the Order may not be amended or modified except by formal written action of the OTS, by and through its Director (or an appropriate designee).

(g) This Stipulation and Consent shall become effective upon acceptance by the OTS, which acceptance shall be indicated by the issuance of the Order.

WHEREFORE, RADICS & CO., on this 31 day of December, 1995, duly signs this Stipulation and Consent, intending to be legally bound thereby.

RADICS & CO., LLC

By: Barney K Morgan

Date: 12/31/95

Accepted By:

OFFICE OF THRIFT SUPERVISION

By: Angelo A. Vigna

Angelo A. Vigna
Regional Director
Northeast Region

Date: 1/10/96, 1995

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION
DEPARTMENT OF THE TREASURY

In the Matter of)	
)	OTS Order No. NE96-1
RADICS & CO., LLC)	
(Formerly STEPHEN P. RADICS AND)	Date: January 10, 1996
COMPANY), Certified Public)	
Accountants, Former)	
External Auditor of MARINE)	
VIEW SAVINGS BANK, SLA,)	
Middletown, New Jersey)	
)	
)	

CONSENT CEASE-AND-DESIST ORDER
REQUIRING AFFIRMATIVE RELIEF

WHEREAS, RADICS & CO., LLC (formerly STEPHEN P. RADICS & COMPANY) ("RADICS & CO."), a certified public accounting firm located in Pine Brook, New Jersey, served until November 1991 as external auditor at MARINE VIEW SAVINGS BANK ("MARINE VIEW"), a federally chartered savings and loan association that maintained its home office in Middletown, New Jersey; and

WHEREAS, in accordance with the Home Owners' Loan Act, the Office of Thrift Supervision ("OTS"), and its predecessor, the Federal Home Loan Bank Board, regulated and supervised the affairs of MARINE VIEW, until MARINE VIEW was placed in receivership on November 11, 1991, and;

WHEREAS, based on the findings set forth in the Stipulation And

Consent To Issuance Of Consent Cease-And-Desist Order Requiring Affirmative Relief ("Stipulation and Consent"), the OTS is of the opinion that, inter alia, RADICS & CO. violated Generally Accepted Auditing Standards and thereby engaged in unsafe and unsound practices and breached the fiduciary duties owed by RADICS & CO. to MARINE VIEW; and

WHEREAS, based on the findings set forth in the Stipulation and Consent, the OTS is of the opinion that the grounds exist to commence an administrative proceeding against RADICS & CO. for the issuance of a final agency order, pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C.A. §§ 1818(b); and

WHEREAS, RADICS & CO., while neither admitting nor denying the OTS's findings or that the foregoing grounds exist, has consented and agreed to the issuance of this Consent Cease-And-Desist Order Requiring Affirmative Relief (the "Order"), pursuant to Section 8(b) of the FDIA, by executing on December 31, 1995, the accompanying Stipulation And Consent, the terms of which are hereby incorporated into the Order by this reference; and

WHEREAS, the undersigned OTS Regional Director has been duly delegated the authority to issue consent orders; and

NOW, THEREFORE, IT IS ORDERED, pursuant to 12 U.S.C. §1818(b), that:

1. RADICS & CO. shall cease and desist from engaging in any acts, omissions or practices involving violations of OTS regulations, unsafe or unsound practices, breaches of fiduciary duties or Generally Accepted Auditing Standards;
2. RADICS & CO. shall comply with the AICPA Audit and

Accounting Guide, "Audits of Savings Institutions" (August 31, 1991) and any subsequent revisions of this Guide ("the AAG-SAV"), and, in particular, with the provisions of the AAG-SAV 1.25-1.32 and the AAG-SAV 18.20-18.29.

3. RADICS & CO. will state fully in all independent audits of federally insured financial institutions, the dollar amount and percentage of the statutory and regulatory minimum capital requirements and the dollar amount and percentage exactly as calculated by, or otherwise known to, RADICS & CO. by which the federally insured financial institution fails to meet those minimum capital requirements established by federal statutes and regulations.

4. RADICS & CO. shall report, within thirty (30) days, to any federally insured financial institution, the full dollar amount and percentage calculated by RADICS & CO. by which the federally insured financial institution fails to meet the minimum capital requirements established by federal statutes and regulations.

5. RADICS & CO. shall disclose, in the notes to any consolidated financial statements or independent audits of federally insured financial institutions prepared by RADICS & CO. whether or not the regulatory capital requirements are being met, and the full dollar amount and percentage by which the regulatory capital requirements have not been met by the federally insured financial institution.

6. If RADICS & CO. disagrees with a statement or calculation, made by a federally insured financial institution in any independent audit performed by RADICS & CO., that the

institution meets or exceeds the minimum regulatory capital requirements, RADICS & CO. shall present its calculations of the institution's regulatory capital without regard to any consideration of materiality, as used in the application of Generally Accepted Auditing Standards, or to whether the dollar amount and percentage is or is not materially different under Generally Accepted Auditing Standards from the regulatory minimum capital requirements set forth in pertinent statutes and regulations.

7. RADICS & CO. shall, within thirty (30) days of the issuance of the Order, advise all of its partners and managers, as well as employees acting as external auditors or performing the internal audit function for any federally insured financial institution, of the terms of the Stipulation and Consent and the Order and shall instruct the above individuals to follow the terms of the Order. RADICS & CO. shall also require each partner, manager and other employee, at the time he or she is assigned to an audit for an federally insured financial institution, to read a copy of the Order.

8. RADICS & CO. shall comply in all respects with all other federal statutes, regulations and agency standards and Generally Accepted Auditing Standards relating to (i) independent audits for federally insured financial institutions; (ii) submissions to the OTS or other appropriate federal banking agencies; and (iii) all other accounting and auditing responsibilities governing external audits of federally insured financial institutions. Nothing in this Order shall preclude RADICS & CO. from disclosing to any federally insured financial institutions, to the OTS or to any other

appropriate Federal banking agency, any information, in addition to that required herein, in accordance with provisions in the AAG-SAV, or other pertinent accounting standards or guidelines.

9. RADICS & CO. shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

10. The Stipulation is made part hereof and is incorporated herein by this reference.

11. This Order is and shall become effective on the date it is issued. This Order shall remain in effect until it is terminated, modified or suspended, which may occur only by formal written action of the OTS, acting by and through its Director, Regional Director or other authorized designee.

SO ORDERED on this 10th day of January, 1996.

OFFICE OF THRIFT SUPERVISION

By: 

Angelo A. Vigna
Regional Director
Northeast Region